

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES F. TOMASIK

Plaintiff,

vs.

Case No. 09-12816
HON. GEORGE CARAM STEEH

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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ORDER ACCEPTING APRIL 9, 2010 REPORT AND
RECOMMENDATION (#14), DENYING DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT (#12), GRANTING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT (#7), REVERSING THE ADMINISTRATIVE LAW JUDGE'S
DECISION

This matter is before the Court on the parties' cross-motions for summary judgment as to plaintiff James Tomasik's claim for judicial review of Defendant Commissioner of Social Security's denial of his February 25, 2005 application for disability insurance benefits. The matter was referred to Magistrate Judge R. Steven Whalen. On April 9, 2010, Magistrate Judge Whalen issued a 16-page Report and Recommendation, recommending that plaintiff's motion for summary judgment be granted, that defendant's motion for summary judgment be denied, reversing the ALJ's decision and remanding to the administrative level for further proceedings consistent with the Report and Recommendation. Magistrate Judge Whalen found that although remand on the physician's report is inappropriate, remand regarding the vocational expert's testimony is appropriate. Further, Magistrate Judge Whalen found that plaintiff is entitled to a remand pursuant to Sentence Four of 42 U.S.C. § 405(g). Defendant has not filed timely objections

to the Report and Recommendation. See 28 U.S.C. § 636(b)(1); E.D. Mich. L.R. 72.1(d)(2).

Having reviewed the record and Report and Recommendation, and in the absence of timely objections, the Court hereby ACCEPTS Magistrate Judge Whalen's well reasoned April 9, 2010 Report and Recommendation as its own. Plaintiff's motion for summary judgment is hereby AFFIRMED. Defendant's motion for summary judgment is hereby DENIED. The administrative law judge's decision is reversed and remanded to the administrative level for further proceedings consistent with the Report and Recommendation.

SO ORDERED.

Dated: May 17, 2010

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on
May 17, 2010, by electronic and/or ordinary mail.

S/Josephine Chaffee
Deputy Clerk